

ROBERT SHORTY AVERY,
Plaintiff,
v.
DAVITA DIALYSIS CENTE
Defendants.

Case No. 16-cv-07061-JD

ORDER OF DISMISSAL

In a prior order, the Court dismissed the plaintiff's motion to amend because it did not state a plausible claim. The amended complaint was filed on October 20, 2017. The Court has not yet ruled on the motion to amend. The plaintiff's conduct has not changed. The plaintiff has not shown that the conduct that happened in this case in over two years. The plaintiff has not shown cause why the case should not be dismissed. The plaintiff has not shown cause why the case should not be dismissed for failure to prosecute. Dkt. No. 24. The plaintiff's response has been filed.

Avery appears to have abandoned the case. While the Court favors the disposition of cases on the merits, it has considered the five factors set forth in *Malone v. United States Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987), and finds that dismissal here is warranted by the circumstances. The case is dismissed without prejudice under Rule 41(b), and the file will be closed.

IT IS SO ORDERED.

Dated: February 18, 2020

JAMES DONATO
United States District Judge